



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201221036

Uniform Issue List 408.03-00

T:EP: RA: TL

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Legend:

Taxpayer A ***

IRA X ***

Account Y ***

Financial Institution F ***

Financial Institution G ***

Amount M ***

Date 1 ***

Date 2 ***

Date 3 ***

Dear ***:

This is in response to your request dated July 6, 2011, as supplemented by correspondence dated August 2, 2011 and September 7, 2011, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, years old, maintains Individual Retirement Account ("IRA") X with Financial Institution F. Taxpayer A represents that he took a distribution of Amount M from IRA X on Date 1 in order to find a better interest rate. Taxpayer A asserts that his failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to a medical condition which impaired his decision making ability. Taxpayer A represents that Amount M was deposited in Account Y at Financial Institution G on Date 1. He asserts that Amount M remained in Account Y at Financial Institution G until Date 3, at which time, he returned Amount M to IRA X.

On Date 2, Taxpayer A was hospitalized for surgery. During surgery, his doctors discovered an extensive infection that required a much more traumatic course of action than had been scheduled. After the surgery, the doctors treated Taxpayer A with a nine-week regimen of intravenous antibiotic treatments. Taxpayer A asserts that his mental duress and the physical requirements of his post surgical convalescence prevented him from being able to make financial decisions during the 60-day rollover period. Taxpayer A has submitted documentation provided by his treating physician attesting to Taxpayer A's physical and mental condition during the 60-day rollover period. On Date 3, Taxpayer A deposited Amount M into IRA X, shortly after the expiration of the 60-day rollover period.

Based on the facts and representations stated above Taxpayer A requests a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code regarding Amount M.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion

of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation Taxpayer A submitted is consistent with his assertion that his failure to accomplish a timely rollover of Amount M was caused by his medical condition.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M. The contribution of Amount M into IRA X on Date 3 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code, provided that all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such contribution.

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No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto. This letter expresses no opinion as to whether IRA X satisfied the requirements of section 408 of the Code.

This letter is directed only to the taxpayer who requested it. Section 6110 (k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file with this office. If you wish to inquire about this ruling, please contact ***, SE:T:EP:RA:T2, at ***-***-****.

Sincerely yours,


Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

CC:
